

OPEN MEETING AGENDA ITEM
BEFORE THE ARIZONA CORPORATION



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AUG 13 2015

2015 AUG 13 P 3:17

AZ CORP COMMISSION
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IN THE MATTER OF STAFF'S INQUIRY
INTO THE TERMINATION OF STANDPIPE
SERVICE BY JOHNSON UTILITIES, L.L.C.

DOCKET WS-02987A-15-0284

**COMMENTS OF JOHNSON UTILITIES
RE STAFF MEMORANDUM AND
PROPOSED ORDER**

On August 7, 2015, Utilities Division Staff filed a Memorandum and Proposed Order in the above-captioned docket. For the reasons set forth herein, Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") strongly opposes the Proposed Order and requests that the Arizona Corporation Commission ("Commission") reject the Proposed Order, confirm that the Company does not have a tariff for standpipe service, and close this docket.

BACKGROUND

Johnson Utilities has a standpipe ("Standpipe") located at 27931 N. Edwards Road, San Tan Valley, Arizona 85143. The Standpipe was installed circa 2003 to provide construction water to developers and builders in the area in order to meet the demand associated with a construction industry that was booming. Over time, however, people with homes or businesses located in areas which are not connected to the Company's water distribution system began to use the Standpipe for potable water that they would haul to their homes or businesses. The use of the Standpipe in such a way for potable purposes was never intended by Johnson Utilities.

In recent years, the Standpipe has been vandalized repeatedly and Johnson Utilities has repaired the Standpipe each time at significant expense to the Company and its ratepayers. The most recent act of vandalism occurred at the end of July, 2015. Someone destroyed the computer which operates the Standpipe. This was the second incident of vandalism this year. In February, someone damaged the computer and the Standpipe was out of service for nearly two months while

1 the Company replaced the computer and completed the necessary programming work. The cost
2 to repair that damage was more than \$5,200. Prior to that, the Standpipe was vandalized in March
3 2014 and was again out of service. Each time the Standpipe has been closed, users have found
4 other sources of potable water in the area.

5 In addition to the serious and costly problem of vandalism, a cottage industry has arisen
6 around the standpipe where water haulers fill tank trailers and tank trucks and deliver potable
7 water to customers for charges that are simply exorbitant. In its Memorandum and Proposed
8 Order, Staff begins by discussing an informal complaint filed by one of these water haulers, San
9 Tan Water Company.¹ San Tan Water Company purchased water at the Standpipe for \$2.49 per
10 thousand gallons and, upon information and belief, resold that water for \$30 per thousand gallons
11 or more.

12 Johnson Utilities questions whether a company such as San Tan Water Company may
13 legally provide potable water service within the area covered by Johnson Utilities' Certificate of
14 Convenience and Necessity ("CC&N"). The company's website states that "San Tan Water
15 Company is a Potable Water Delivery Company that serves several rural areas in Phoenix, AZ."²
16 Article 15, Section 2 of the Arizona Constitution defines public service corporations as "[a]ll
17 corporations other than municipal engaged in furnishing ... water for irrigation, fire protection or
18 other public purposes..." San Tan Water Company would appear to be operating as a public
19 service corporation without a CC&N.

20 Moreover, water haulers such as San Tan Water Company appear to operate largely
21 unregulated and Johnson Utilities has become increasingly concerned about the legal liability that
22 may accrue to Johnson Utilities—and ultimately its ratepayers—for allowing these businesses to
23 resell its potable water. Beyond liability, Johnson Utilities has concerns about the health and
24 welfare of those who reside within the boundaries of its CC&N and who obtain potable water
25 from water haulers. Johnson Utilities' water quality is strictly monitored by the Arizona
26 Department of Environmental Quality, and the Company takes and analyzes dozens of water

27
28 ¹ Staff refers to San Tan Water Company as San Tan Water Hauling.

² <http://www.santanwatercompany.net/>

1 quality samples every month. To the Company's knowledge, there is no such oversight regarding
2 water haulers, even though those companies are providing potable water.

3 For these and other reasons, Johnson Utilities notified users of the Standpipe that the
4 Company would be permanently closing the Standpipe. Users of the Standpipe will still have
5 several reasonable alternatives for obtaining potable water, just as they have had each and every
6 time the Standpipe has been closed due to vandalism. The Town of Florence ("Florence")
7 operates a standpipe at 425 E. Ruggles Street, Florence, Arizona, 85132 and the Apache Junction
8 Water Utilities Community Facilities District ("CFD") operates a standpipe at 725 E. Baseline
9 Avenue, Apache Junction, Arizona, 85119. According to Attachment 2 of the Staff Memorandum
10 and Proposed Order, the Florence standpipe is approximately 13 miles from the Johnson Utilities
11 Standpipe and the CFD standpipe is approximately 17 miles from the Johnson Utilities Standpipe.
12 The Florence standpipe is coin-operated and provides potable water 24 hours-a-day, seven days-
13 a-week. The CFD offers both potable and non-potable water to anyone establishing an account
14 from two separate standpipes that are open 24 hours-a-day, seven days-a-week. There are also
15 various water haulers in the vicinity of the Standpipe who will continue to deliver water for a fee.
16 For example, earlier this year the San Tan Water Company continued to deliver water while the
17 Standpipe was closed for nearly two months due to vandalism, as evidenced by the following post
18 on the company's website:

19 Please note that San Tan Water Company will continue to provide water FROM
20 APACHE JUNCTION for a price of \$45 per 1,000 gallons. When/If the standpipe
21 is fixed we will continue to offer the same great service for the same great price
22 that we always have.³

23 The fact is undisputed that no person who has been using the Johnson Utilities Standpipe
24 will go without potable water as a result of the closure of the Standpipe. Those users will simply
25 drive to the Florence standpipe or the CFD standpipe instead of driving to the Johnson Utilities
26 Standpipe.

27
28 ³ <http://www.santanwatercompany.net/water-delivered-from-apache-junction-standpipe-due-to-vandalism-of-johnson-utilities-standpipe/>

RESPONSE TO STAFF MEMORANDUM AND PROPOSED ORDER

In its Memorandum and Proposed Order, Staff recommends that the Commission order Johnson Utilities to reinstate the standpipe service to allow the Commission “an opportunity to fully consider whether the continued provision of standpipe service by Johnson [Utilities] is in the public interest.”⁴ However, Staff’s recommendation is fatally flawed because it is based upon the erroneous presumption that Johnson Utilities has a current standpipe service tariff, which it does not. The Company’s current tariff was approved in Decision 71854 in 2010 and there is no mention of standpipe service in the tariff. While the Company does provide construction water at the standpipe pursuant to its construction water tariff, it does not have a tariff for standpipe service. Thus, the Commission cannot order the Company to continue to provide a service which is not authorized in the Company’s tariff.

Staff responds in a footnote in the Memorandum and Proposed Order that the lack of standpipe service in the Company’s current tariff is the result of “an error in Staff’s Direct Testimony in the Company’s last rate case.”⁵ While Johnson Utilities did propose a standpipe service rate in its last rate case application, Staff did not recommend a standpipe rate in either its direct or surrebuttal testimony. As a result, the Company reassessed its desire to offer a tariff for standpipe service for the reasons described above. In a discussion between Company owner George Johnson and the former Director of the Utilities Division, Mr. Johnson indicated that he had reconsidered offering a standpipe service tariff and that he did not want to pursue the matter. Certainly, Johnson Utilities never contemplated operating a standpipe that would provide potable water via unregulated water haulers to a large group of users.

If Staff believes it made an error in the last rate case, then the legal course of action would be for Staff to file a petition to amend Decision 71854 pursuant to A.R.S. §40-252. This would provide an appropriate forum to take evidence on Staff’s assertion regarding the alleged error in its rate case testimony and it would afford the Company due process and an opportunity to present its evidence. As submitted, the filing by Staff in this docket constitutes an improper collateral

⁴ Staff Memorandum and Proposed Order (August 7, 2015) at 1 (emphasis added).

⁵ *Id.* at 1, footnote 1.

1 attack on Decision 71854 in violation of A.R.S. §40-252 and the Company's due process rights.

2 Staff asserts in its Memorandum and Proposed Order that "it is undisputed that the
3 Company has been providing standpipe service, charging \$2.49 per thousand gallons, since at
4 least August 24, 2010."⁶ To the contrary, Johnson Utilities provides construction water through
5 the Standpipe at the tariffed construction water rate of \$2.49 per thousand gallons, as authorized
6 in the Company's current tariff. It was never Johnson Utilities' intent that the Standpipe would
7 be used by water haulers to resell potable water at greatly inflated prices. Thus, it was appropriate
8 for Johnson Utilities to close the account of San Tan Water Company because it was not using
9 water from the Standpipe for construction purposes.

10 Johnson Utilities would also point out that Staff is improperly attempting to address in
11 this docket an informal complaint lodged by San Tan Water Company. Staff's Memorandum and
12 Proposed Order starts off with a discussion about San Tan Water Company's informal complaint,
13 which appears to be the very underpinning of Staff's recommendations in this docket. However,
14 if San Tan Water Company believes that Johnson Utilities has violated its tariff or the rules,
15 regulations or orders of this Commission, the appropriate way to resolve those allegations is a
16 formal complaint filed pursuant to A.R.S. §40-246. San Tan Water Company is not a party to
17 this docket, yet Staff has raised the company's allegations and seeks to force Johnson Utilities to
18 address those allegations without the benefit of a formal complaint, discovery, or the cross-
19 examination of San Tan Water Company witnesses under oath in a hearing. Forcing Johnson
20 Utilities into such a fundamentally unfair process is inconsistent with A.R.S. §40-246 and
21 deprives the Company of its right to due process.

22 Staff states in its Memorandum and Proposed Order that the Commission authorized
23 Johnson Utilities to provide standpipe service at a rate of \$3.75 per thousand gallons in Decision
24 60233 (May 27, 1997). Staff has told the Company that it can find no language in Decision 71854
25 which discusses eliminating standpipe service, and where there is no express language
26 affirmatively terminating a specific service in a tariff, then that service carries forward even
27 though there is no mention of the service in the new tariff. Staff's argument, if adopted, would

28 ⁶ *Id.* at 3.

1 obviously lead down a never-ending rabbit hole where any provision of a tariff that is not
2 expressly terminated would carry forward in future tariffs. Thus, anyone seeking to understand
3 and comply with a utility's tariff would be forced to review all prior rate case decisions and each
4 and every version of the tariff back to the utility's beginning. Clearly, such a result would make
5 very bad public policy.


6 Johnson Utilities would note also that Footnote 1 to Section D of the superseded tariff
7 states that the "Company will attempt to provide 60 days' notice of cessation of standpipe
8 service." Thus, even though the old tariff does not apply today, the tariff allowed Johnson Utilities
9 to end the standpipe service that was authorized under the tariff.

10 CONCLUSION

11 Johnson Utilities opposes each of the recommendations contained in the Staff
12 Memorandum and Proposed Order. Johnson Utilities does not have a current standpipe tariff and
13 the Company has no obligation to continue to operate the Standpipe. Customers who wish to
14 purchase construction water under the Company's construction water tariff will continue to have
15 access to construction water via meters obtained from Johnson Utilities. For all of the reasons set
16 forth herein, Johnson Utilities urges the Commission to reject Staff's Proposed Order, to confirm
17 that Johnson Utilities does not have a tariff for standpipe service, and to close this docket.

18 RESPECTFULLY SUBMITTED this 13th day of August, 2015.

19 CROCKETT LAW GROUP PLLC

20 
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25 **ORIGINAL** and thirteen (13) copies
26 filed this 13th day of August, 2015, with:

27 Docket Control
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1 **COPIES** of the foregoing hand-delivered
2 this 13th day of August, 2015, to:

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